

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THERABODY, INC., a Delaware corporation,

Plaintiff,

V.

THE TJX COMPANIES, INC., a Delaware corporation,

Defendant.

C.A. No. 22-310-RGA

**JOINT STIPULATION AND [PROPOSED] ORDER
REGARDING STAY OF ACTION**

WHEREAS, on March 9, 2022, Plaintiff Therabody, Inc. (“Therabody”) filed its Complaint in the above-captioned action, C.A. No. 22-310-RGA (this “Action”), D.I. 1;

WHEREAS, on May 13, 2022, Therabody filed a First Amended Complaint, D.I. 13, alleging that certain Tzumi percussive massage devices, along with related connectors and attachments (collectively, the “Accused Products”), as resold by Defendant The TJX Companies, Inc. (“TJX”), infringe fourteen of Therabody’s utility and design patents (collectively, the “Patents-in-Suit”);

WHEREAS, on June 27, 2022, TJX filed its Answer and Additional Defenses to First Amended Complaint, D.I. 19;

WHEREAS, an earlier-filed action is pending against the manufacturer of the Accused Products – Tzumi Electronics LLC and Tzumi Inc. (collectively, “Tzumi”) – in the United States District Court for the Southern District of New York, captioned *Theragun, Inc. v. Tzumi Electronics LLC et al.*, C.A. No. 21-7803 (S.D.N.Y. filed Sept. 17, 2021) (the “Tzumi Action”),

in which Therabody (formerly known as Theragun, Inc.) alleges that the Accused Products made and sold by Tzumi infringe the Patents-in-Suit;

WHEREAS, on August 1, 2022, TJX filed a motion to stay this Action, D.I. 30 (the “Motion to Stay”), until final judgment is entered in the Tzumi Action; and

WHEREAS, upon the filing of the Motion to Stay, Therabody and TJX have met and conferred and agree, in the interests of efficiency and judicial economy, that this Action should be stayed on the terms and conditions specified below.

IT IS ACCORDINGLY HEREBY STIPULATED by the Parties, through their respective counsel of record and subject to the approval of the Court, in order to facilitate the adjudication of this Action, as follows:

1. This Action shall be stayed in its entirety pending the entry of final judgment in the Tzumi Action, without prejudice to either party moving to lift the stay for good cause;
2. TJX agrees that any final decision of the S.D.N.Y. court in the Tzumi Action on the merits of Therabody’s allegations of infringement of the Patents-in-Suit by the Accused Products shall be binding on TJX as though that decision was also made in this Action;
3. TJX agrees that any final decision of the S.D.N.Y. court in the Tzumi Action on the merits of challenges to the validity of the Patents-in-Suit shall be binding on TJX as though that decision was also made in this Action;
4. TJX agrees that it will not oppose issuance of a Rule 45 nonparty subpoena on TJX in the Tzumi Action, while reserving all objections to the subpoena other than it being premature;
5. All rights of appeal are preserved; and

6. All discovery and other deadlines set forth in the Court's Scheduling Order [D.I. 27]
or otherwise are hereby vacated.

Respectfully submitted,

/s/ Karen E. Keller

Karen E. Keller (No. 4489)
Andrew E. Russell (No. 5382)
Nathan R. Hoeschen (No. 6232)
Emily S. DiBenedetto (No. 6779)
SHAW KELLER LLP
I.M. Pei Building
1105 North Market Street, 12th Floor
Wilmington, DE 19801
(302) 298-0700
kkeller@shawkeller.com
arussell@shawkeller.com
nhoeschen@shawkeller.com
edibenedetto@shawkeller.com
Attorneys for Plaintiff

OF COUNSEL:

Diane C. Ragosa
Laurence P. Chirch
Parker Ibrahim & Berg LLP
270 Davidson Avenue
Somerset, NJ 08873
(212) 596-7037

Brett J. Williamson
Marc J. Pensabene
Laura B. Gore
O'Melveny & Myers, LLP
Times Square Tower, 7 Times Square
New York, NY 10036
(212) 326-2000

Cameron W. Westin
Thomas McClinton Harris
O'Melveny & Myers, LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660
(949) 823-6900

Dated: August 15, 2022

/s/ Brian A. Biggs

Brian A. Biggs (No. 5591)
Angela C. Whitesell (No. 5547)
DLA PIPER LLP
1201 N. Market Street, Suite 2100
Wilmington, DE 19801
302-468-5661
brian.biggs@dlapiper.com
angela.whitesell@us.dlapiper.com
Attorneys for Defendant

OF COUNSEL:

Nicholas G. Papastavros
G. Perry Wu
DLA PIPER LLP
33 Arch Street 26th Floor
Boston, MA 02110-1447
(617) 406-6000
nick.papastavros@us.dlapiper.com
perry.wu@us.dlapiper.com

SO ORDERED this _____ day of August, 2022.

UNITED STATES DISTRICT COURT JUDGE